

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA**

In the matter of an application  
under and in terms of Articles 17  
and 126 of the Constitution.

**S.C. (F.R.) Application No.368/2012**

1. Mananadewage Shifani,  
No.34/1, Kolamunna,  
Piliyandala.
2. Nazreen Nazar,
3. Hazna Nazar,

Both minor children presently  
believed to be residing at No.10,  
Horton Place, Colombo 07, and  
appearing by their mother,  
Custodian and/or Next Friend,  
Mananadewage Shifani (the 1<sup>st</sup>  
Petitioner above-named), of No.  
34/1, Kolamunna, Piliyandala.

**Petitioners**

**Vs.**

1. W.A. Somaratne Wijayamuni,  
Officer-in-Charge,  
Police Station,  
Piliyandala.
2. Samanthi Gunasekara,  
Police Officer (WPC),  
Women and Children's Division,

Police Station,  
Piliyandala.

3. Kattadige Dayananda,  
Police Officer (PC No.22039),  
Police Station,  
Piliyandala.
4. Ellagodage Thushara Rukshan,  
Police Officer (PC No.72753),  
Police Station,  
Piliyandala.
5. Kadiragamar,  
Officer attached to the Special  
Police Investigations Unit,  
National Child Protection  
Authority,
6. Buddhika Prasad Balachandra,  
Officer-in-Charge,  
Special Police Investigations  
Unit,  
National Child Protection  
Authority,
7. R.M.R. Rathnayaka,  
Officer attached to the Special  
Police Investigations Unit,  
National Child Protection  
Authority,
8. Sarath Kariyapperuma,  
Officer attached to the Special  
Police Investigations Unit,  
National Child Protection  
Authority,

All of the National Child

Protection Authority of  
No.330,  
Thalawathugoda Road,  
Madiwela.

9. Ravi Wijayagunawardena,  
Deputy Inspector General-  
Crimes and Operations,  
Sri Lanka Police,  
Police Headquarters,  
Colombo 01.
10. P. Jayasundera,  
Inspector General of Police,  
Sri Lanka Police,  
Police Headquarters,  
Colombo 01.
11. National Child Protection  
Authority,  
No.330,  
Thalawathugoda Road,  
Madiwela.
12. Natasha Balendra,  
Chairperson,  
National Child Protection  
Authority,  
No.330,  
Thalawathugoda Road,  
Madiwela.
13. J.L.P. Wilson,  
Registrar,  
District Court of Colombo,  
Registry of the District Court  
of Colombo,  
Hulftsdorp Street,  
Colombo 12.

14. H.V. Sarath,  
Probation Officer,  
Probation Office (Colombo),  
No. 375, Dam Street,  
Colombo 12.
15. Yamuna Perera,  
Commissioner,  
Department of Probation and  
Child Care Services,  
No.150A, L.H.P. Building,  
Nawala Road,  
Nugegoda.
16. Mohamed Ismail Mohamed  
Nazar,  
No.10, Horton Place,  
Colombo 07.
17. Hon. Attorney-General,  
Attorney-General's  
Department,  
Hulftsdorp Street,  
Colombo 12.

### **Respondents**

BEFORE : K. SRIPAVAN, CHIEF JUSTICE,  
B.P. ALUWIHARE, PC, J.  
SISIRA J. DE ABREW, J.

COUSNEL : Nilshantha Sirimanne for the Petitioner.

Parinda Ranasinghe Senior DSG for all the  
Respondents except the 16<sup>th</sup> Respondent.

A.L.M.K. Arulanandan PC with Anoj  
Hettiarachchi for the 16<sup>th</sup> Respondent.

ARGUED ON : 23.05.2016.

DECIDED ON : 28.07.2016

**SISIRA J. DE ABREW, J.**

The petitioners, by this petition, seek a declaration that their fundamental rights guaranteed by Articles 11, 12(1), 13(1) and 13(2) of the Constitution have been violated by the respondents.

This Court, by its order dated 15.12.2012, granted leave to proceed for alleged violation of the fundamental rights guaranteed under Articles 12(1), 13(1) and 13(2) of the Constitution.

The 16<sup>th</sup> respondent and the 1<sup>st</sup> petitioner are husband and wife. The 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners are the two daughters of the 1<sup>st</sup> petitioner and the 16<sup>th</sup> respondent. As there was a dispute relating to the affairs of the matrimonial house, the 16<sup>th</sup> respondent filed a case in the District Court of Colombo requesting the custody of the two daughters. The case was taken up, but it was an ex-parte trial as the 1<sup>st</sup> petitioner had failed to take the necessary steps in the District Court. The learned District Judge, by her order dated 13.01.2012, decided that the 16<sup>th</sup> respondent (the father of the children) was entitled to the physical and legal custody of the two daughters. The learned District

Judge on 31.05.2012 directed that her order be implemented through the National Child Protection Authority (NCPA). But the Registrar of the District Court signed the said order only on 6.06.2012. The Officer-in-Charge of the NCPA received the said order on 10.06.2012.

On 20.06.2012 the Officer-in-Charge of the NCPA (the 6<sup>th</sup> respondent) requested the Officer-in-Charge of the Piliyandala Police Station (the 1<sup>st</sup> respondent) to take the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners to custody of the police as there was an order by the District Court to hand them over to the 16<sup>th</sup> respondent. On 21.06.2012 around 4.45 p.m. WPC 4574 Samantha attached to Piliyandala Police Station took the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners into her custody and brought them to the Piliyandala Police Station around 5.15 p.m. (vide document marked Y1 by the 1<sup>st</sup> respondent). The officers of the NCPA around 7.15 p.m. on 21.06.2012 took the custody of the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners from the Piliyandala Police Station, brought them to the NCPA and handed them over to the 16<sup>th</sup> respondent around 8.45 p.m. on 21.06.2012 (vide document marked R2 by the 6<sup>th</sup> respondent). The 6<sup>th</sup> respondent by letter dated 22.06.2012, reported to the District Court of Colombo that he implemented the order of the District Court.

The above facts are admitted by both parties.

Learned Counsel for the petitioners submitted that the Civil Appellate High Court, in an application for revision filed by the 1<sup>st</sup> petitioner, issued a stay order suspending the implementation of the order of the District Court and any further proceedings of the District Court. Learned Counsel further submitted that the issue of the said stay order was brought to the notice of the 6<sup>th</sup> respondent by Mr. Punithasegaran, Attorney-at-Law who represented the 1<sup>st</sup> petitioner at the NCPA. But the 6<sup>th</sup> respondent did not heed to the said information. Learned Counsel for the petitioner further submitted that the operation of the said stay order was even brought to the notice of the officers of the Piliyandala Police Station by the relatives of the 1<sup>st</sup> petitioner, but the officers attached to the Piliyandala Police Station did not pay any attention to the said information.

Learned Counsel contended that it was wrong for the 1<sup>st</sup> respondent and the 6<sup>th</sup> respondent to have taken the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners into their custody and to have them handed over to the 16<sup>th</sup> respondent when there was a stay order issued by the Civil Appellate High Court. I now advert to the above contention. Although the Civil Appellate High Court issued the stay order on 19.06.2012, was it produced before the 1<sup>st</sup> respondent and/or the 6<sup>th</sup> respondent on 21.06.2012? The answer is in the negative. Did the 1<sup>st</sup> petitioner or the relatives of the 1<sup>st</sup> petitioner or the Attorney-at-Law who represented the

1<sup>st</sup> petitioner at the NCPA produce a copy of the said stay order before the 1<sup>st</sup> respondent and/or the 6<sup>th</sup> respondent? The answer is in the negative. Learned Counsel for the petitioners at the hearing before us, admitted that the District Court received the said stay order issued by the Civil Appellate High Court only on 22.06.2012. Under these circumstances, can the 1<sup>st</sup> respondent and/or the 6<sup>th</sup> respondent be found fault with for implementing the order of the District Court? The answer is and should be in the negative. On 21.06.2012 (the day that the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners were taken into custody) the 1<sup>st</sup> respondent was having a valid order issued by the District Court. Then can any police officer be found fault with for implementing the said order of the District Court? The answer is in the negative.

Can the 1<sup>st</sup> respondent or the 6<sup>th</sup> respondent be found fault with for not placing reliance on the information furnished by Mr. Punithasegaran, Attorney-at-Law and the relatives of the 1<sup>st</sup> petitioner that a stay order had been issued by the Civil Appellate High Court? Was this information passed by an official source? The answer is in the negative. Had the Registrar of the Civil Appellate High Court in an official way communicated this information to the 1<sup>st</sup> respondent and/or the 6<sup>th</sup> respondent, it should have been considered as an official information. In my view the information given by Mr. Punithasegaran, Attorney-at-Law is not an official communication and the 1<sup>st</sup> and the 6<sup>th</sup>

respondents cannot be found fault with for not placing reliance on the said information. When I consider the above matters, I am unable to agree with the said contention of the learned Counsel for the petitioners and therefore reject it. Learned Counsel for the petitioners next contended that the Officer-in-Charge, Piliyandala Police Station the 1<sup>st</sup> respondent had no legal authority to implement the order of the District Court and he had no authority or legal duty to arrest the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners. He contended that if at all it was the 6<sup>th</sup> respondent who should have implemented the said order. He therefore contended that the fundamental rights of the petitioners have been violated by the 1<sup>st</sup> respondent. I now advert to this contention. In considering the said contention, I would like to consider a hypothetical example. If the Magistrate, Mt. Lavinia issues a warrant to arrest a person residing in Jaffna, should the Officer-in-Charge of the Mt. Lavinia Police Station proceed to Jaffna all the way from Mt. Lavinia to arrest the man in Jaffna . The answer for obvious reasons is in the negative. The Officer-in-Charge, Mt. Lavinia would request the Officer-in-Charge , Jaffna Police Station to implement the Court order and the Officer-in-Charge, Jaffna Police Station is duty bound to arrest him. This procedure is lawful under Section 56 of the Police Ordinance which reads as follows:-

“Every police officer shall for all purposes in this Ordinance contained be considered to be always on duty, and shall have the powers of a police officer in every part of Sri Lanka.”

It shall be his duty-

- (a) to use his best endeavours and ability to prevent all crimes, offences and public nuisances;
- (b) to preserve the peace;
- (c) to apprehend disorderly and suspicious characters;
- (d) to detect and bring offenders to justice;
- (e) to collect and communicate intelligence affecting the public peace; and
- (f) promptly to obey and execute all orders and warrants lawfully issued and directed to him by any competent authority.”

Under Section 56 (f) of the Police Ordinance, it shall be the duty of a police officer promptly to obey and exercise all orders and warrants issued and directed to him by any competent authority. Thus, in the earlier example when the warrant is issued by the Mt. Lavinia Magistrate and the same is directed by the Officer-in-Charge, Mt. Lavinia to Officer-in-Charge, Jaffna, he (the Officer-in-Charge, Jaffna), under Section 56 of the Police Ordinance, has the power to execute the warrant. In the same manner, if the District Judge of Colombo issues an order to hand over the custody of the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners to the 16<sup>th</sup> respondent and the same to be implemented through the Officer-In-Charge of the NCPA, the Officer-in-Charge of Piliyandala Police Station, in terms of Section 56 of the Police Ordinance, has the power to implement the said order when the Officer-In-Charge, NCPA makes a request to that effect. When Section 56 of the Police Ordinance is considered, it is clear that a police officer is always on duty and shall have the power of a police officer in any part of the country. Thus, when a police officer sees an offence being committed, whether he is attached to the NCPA or the Piliyandala Police

Station or any other branch of the Police Department, he (the police officer) is empowered under Section 56 of the Police Ordinance to act according to the law including the arrest of the offender and producing him in court. Thus, when the Officer-in-Charge of the NCPA requested the Officer-in-Charge of Piliyandala Police Station to take the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners into custody in order to implement the order of the District Court, he (the Officer-in-Charge, Piliyandala Police Station) has, under Section 56 of the Police Ordinance, a duty to accede to the request and he, in implementing the said request, has not violated any legal provisions as he has acted within Section 56 of the Police Ordinance.

It has to be noted here that the Officer-in-Charge of the NCPA, the 6<sup>th</sup> respondent, before requesting the Officer-in-Charge, Piliyandala Police Station, the 1<sup>st</sup> respondent, to take the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners into custody, had taken reasonable steps to get down the 1<sup>st</sup> petitioner. He has, by way of a police message sent through the Piliyandala Police, requested the 1<sup>st</sup> petitioner to bring the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners to the NCPA on 13.06.2012. This message had been sent on 10.06.2012. As the 1<sup>st</sup> petitioner did not respond to the said message, the 6<sup>th</sup> respondent again on 20.06.2012 sent another message to the 1<sup>st</sup> petitioner, but she again failed to respond to the said message (Vide document marked R1a, the 6<sup>th</sup> respondent has filed along with his affidavit). The 6<sup>th</sup> respondent has, on several occasions, sent officers to

meet the 1<sup>st</sup> petitioner but the said officers could not meet her, (Vide document marked X1 by the 1<sup>st</sup> respondent along with his affidavit). It has to be noted here that when WPC 4574 Samanthi took the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners into the custody, the 1<sup>st</sup> petitioner was not present and they were taken into custody from a house in the neighbourhood (Vide document marked Y by the 1<sup>st</sup> respondent along with his affidavit). It has to be stated here that the intention of the police officer attached to the NCPA and the Piliyandala Police Station was to implement the order of the District Court.

When I consider all the above matters, I am unable to agree with the above contention of learned Counsel for the petitioner and reject the same. I further hold that the respondents have not violated the fundamental rights of the petitioners when they were taken into custody. I further hold that taking the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners into custody is lawful as it was done in order to implement the order of the District Court.

Learned Counsel for the petitioners submitted that taking of the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners into custody by the Piliyandala Police Station amounted to an arrest. He attempted to strengthen his contention on the basis of the document marked 'X1' by the 1<sup>st</sup> respondent along with his affidavit. He submitted that the main function

of the NCPA is to protect children and that the actions of the police officers who arrested the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners amounted to violation of the main purpose of the NCPA. I now advert to this contention. 'X1' is a message sent by the 6<sup>th</sup> respondent to Piliyandala Police Station. The heading of the document marked 'X1' reads as follows:-

"Take steps to arrest".

Although the heading states the above words, the message in the said document requests the Officer-in-Charge, Piliyandala Police Station to take the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners into custody in order to implement the order of the District Court. Therefore, the words 'arrest' in my view, in the head note of the said message cannot be interpreted to say that the message was a request to arrest the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners.

Learned Counsel for the petitioners relied on the judgment in the case of ***Namasivayam v. Gunaratne*** 1989 1SLR page 394. Facts of the said case are as follows:-

"The petitioner was travelling in a bus at Nawalapitiya when he was arrested by the 3<sup>rd</sup> respondent. He was not informed the reason for his arrest. He was taken to a security personnel camp and kept there and repeatedly assaulted by the 3<sup>rd</sup> respondent and other security personnel. He was forced to make a statement on the lines suggested by the 3<sup>rd</sup> respondent. He was not released

after his statement as promised but continued to be kept in unlawful detention.

The respondent said the petitioner was arrested because he was stated to be acquainted with the facts of a case of robbery of a gun from Rozella Farm which was being investigated. He wanted the petitioner to accompany him to the Ginigathhena Police Station.”

Sharvananda CJ at page401 observed thus –

“The petitioner states that he was arrested on 28.07.1986 when he was travelling in a bus by the 3<sup>rd</sup> respondent and that he was not informed of the reason of the arrest. The 3<sup>rd</sup> respondent in his affidavit admitted the incident but stated that he did not arrest the petitioner. According to him he only required the petitioner to accompany him to the Ginigathhena Police Station for questioning and released him after recording the statement at the station. If his action constituted an arrest in the legal sense, implicit in the 3<sup>rd</sup> respondent’s explanation is the admission that he did not give any reason to the petitioner for his arrest. In my view when the 3<sup>rd</sup> respondent required petitioner to accompany him to the police station and took him to the police station, the petitioner was in law arrested by the 3<sup>rd</sup> respondent. The petitioner was prevented by

the action of the 3<sup>rd</sup> respondent from proceeding with his journey in the bus. The petitioner was deprived of his liberty to go where he pleased.”

The facts of the above case are quite different from the facts of the present case. Therefore the decision in Namasivayam’s case has no application to the present case. Did the police officer attached to the Piliyandala Police Station and the NCPA have any intention to arrest the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners? In this regard, it must be remembered that the District Judge of Colombo had directed the NCPA to implement the order of the District Court. The 6<sup>th</sup> respondent received the order of the District Court marked ‘R1’ on 10.06.2012. On receipt of the said order what did the 6<sup>th</sup> respondent do? He, on the same day, sent a police message to the 1<sup>st</sup> petitioner asking her to be present at 10.30 a.m. on 13.06.2012 at the NCPA in order to implement the order of the District Court. But the 1<sup>st</sup> petitioner failed to appear at the NCPA. On 11.06.2012 the 6<sup>th</sup> respondent sent the police message to the 16<sup>th</sup> respondent asking him to be present at 10.00 a.m. on 13.06.2012 at the NCPA. The 16<sup>th</sup> respondent complied with the said order but the order of the District Court of Colombo could not be implemented as the 1<sup>st</sup> petitioner failed to appear at the NCPA. Thereafter the 6<sup>th</sup> respondent sent his officers to the house of the 1<sup>st</sup> petitioner on several occasions, but the officers could not meet her as she was not at home (vide

document marked 'R1a' and 'X1'). Thereafter the 6<sup>th</sup> respondent, on 20.06.2012, sought the assistance of the 1<sup>st</sup> respondent to take the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners into custody in order to implement the order of the District Court. The 6<sup>th</sup> respondent informed the 1<sup>st</sup> respondent the existence of an order made by the District Court. When WPC 4574 Samanthi went to the house of the 1<sup>st</sup> petitioner she noticed that the house had been closed. WPC 4574 Samanthi later made inquiries from the neighbourhood and found the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners hiding under a bed in a neighbouring house. The 1<sup>st</sup> petitioner however appeared at the NCPA on 21.06.2012 when the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners were being handed over to the 16<sup>th</sup> respondent. The police officers attached to the NCPA had informed the parties that they were only implementing the order of the District Court of Colombo and if the High Court later directs the NCPA to hand over the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners to the 1<sup>st</sup> petitioner, they would take steps to hand over the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners to the 1<sup>st</sup> petitioner. Police officers attached to the NCPA after informing the above matters, requested both parties to sign the police book, but the 1<sup>st</sup> petitioner refused to sign the book. The above behaviour of the 1<sup>st</sup> petitioner clearly demonstrates that she did not honour the order of the District Court also had acted in defiance of the implementation of the order of the District Court. It is an unwritten rule that the parties to an action must comply with orders of court and the relevant officers (authorities) must and should implement such

orders. If this rule is not implemented, the country cannot function and the law and order cannot be implemented in this country. As I observed earlier the implementation of the order of court has to be done by the police officers when they are directed by Court. When I consider the above facts, I am of the opinion that the police officers attached to the NCPA and the Piliyandala Police Station have only implemented the order of the District Court, but have not arrested the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners and the police officers cannot be found fault with for taking the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners into their custody. For the above reasons, I reject the contention of learned Counsel for petitioners.

Learned Counsel for the petitioners further submitted that when the police officers went to the house of the 1<sup>st</sup> petitioner, they were carrying weapons and that it was wrong for them to have carried weapons. When the police officers set off for implementation of certain duties they can expect resistance. Therefore one cannot say that it is illegal for the police officers to carry weapons when they go to perform their duties. It is lawful for the police officers to carry lawful weapons issued by the police station when they set out on a journey to do their lawful duties. Therefore no one can find fault with the police officers when they took weapons to take the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners into custody. For the above reasons, I reject the above contention of learned Counsel for the petitioners.

Learned Counsel for the petitioners further contended that keeping the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners at the Piliyandala Police Station for two hours and fifteen minutes after taking them into custody is wrong and that the said act by the police officers has violated the fundamental rights of the petitioners. I now advert to this contention. I have earlier held that the taking of the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners into custody by the police officers attached to the Piliyandala Police Station was lawful and their intention was to implement the order of the District Court. If this was the situation, the Officer-in-Charge, Piliyandala Police Station (the 1<sup>st</sup> respondent) has to hand over the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners to the Officer-in-Charge of the NCPA. The 1<sup>st</sup> respondent, in his affidavit, states that upon the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners being brought to the Piliyandala Police Station, he immediately notified the 6<sup>th</sup> respondent that the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners were in his custody and the 6<sup>th</sup> respondent sent his officers attached to the NCPA to the Piliyandala Police Station. Thereafter around 7.15 p.m. he handed over the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners to the IP Ratnayake attached to the NCPA. The period that the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners were kept at the Piliyandala Police Station was from 5.00 p.m. to 7.15 p.m. The officers of the NCPA had to travel to Piliyandala from Madiwela. When I consider the above facts, I take the view that the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners were handed over to the NCPA within a reasonable time period and that there was no delay in handing

them over to the NCPA. When I consider all these matters, I am unable to find fault with the procedure adopted by the police officers attached to the Piliyandala Police Station and the NCPA. For the above reasons, I am unable to agree with the above contention of learned Counsel for the petitioners. I further hold that the police officers attached to the both Piliyandala Police Station and the NCPA have not violated the fundamental rights of the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners when they were kept at the Piliyandala Police Station.

Learned Counsel for the petitioners also contended that the police officers attached to the NCPA took the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners who were female children without the assistance of a WPC. It is correct that the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners have been taken to the NCPA from the Piliyandala Police Station without the assistance of a WPC. It would have been better if the female children were given the assistance of a WPC for the said purpose. Was there any opportunity for the police officers to cause any harm to the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners during the travel to NCPA from the Piliyandala Police Station? I now advert to this question. Mangalika the sister of the 1<sup>st</sup> petitioner, in her affidavit marked 'P12a', states that after the officers of the Piliyandala Police Station took the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners to their custody, she with her mother came to the Piliyandala Police Station and then saw the 2<sup>nd</sup> the 3<sup>rd</sup> petitioners seated in the police station. This suggests that Mangalika had not travelled to

the Piliyandala Police Station in the police vehicle with the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners. But WPC 4574 Samanthi who took the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners into custody states in her affidavit that when she was taking the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners to the Piliyandala Police Station, Mangalika too came in the police vehicle. The said averment is supported by her notes marked 'Y1'.

The 6<sup>th</sup> respondent in his affidavit states that his officers brought the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners from the Piliyandala Police Station to the NCPA with Mangalika. This averment is also supported by notes of IP Ratnayake marked 'R2'. IP Ratnayake is the officer who brought the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners to the NCPA with PS 50197 Sarath. After the said affidavit was filed by the respondent, Mangalika in a separate affidavit, did not counter the above facts. When I consider all the above matters, it is not possible for me to conclude that the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners were brought from Piliyandala Police Station to the NCPA without a female. When I consider the above matters, I hold the view that there was no opportunity for the police officers attached to the Piliyandala Police Station and the NCPA to cause any harm to the 2<sup>nd</sup> and the 3<sup>rd</sup> petitioners. For the above reasons, I am unable to agree with the above contention of learned Counsel for the petitioners and hold that there is no material to conclude that the officers attached to the NCPA have violated the fundamental rights of the petitioners. For the above

reasons, I hold that there is no merit in the petitioners' case and further hold that the respondents have not violated the fundamental rights of the petitioners.

For the aforementioned reasons, I dismiss the petition of the petitioners. In all the circumstances of this case I do not order costs.

*Petition dismissed.*

JUDGE OF THE SUPREME COURT

**K. SRIPAVAN, CJ.**

I agree.

CHIEF JUSTICE

**B. P. ALUWIHARE, PC, J.**

I agree.

JUDGE OF THE SUPREME COURT